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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 JULIETA ALVAREZ,) No. CV 11-07444-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION
14) AND ORDER
15 v.)
16) (Social Security Case)
17 MICHAEL J. ASTRUE,)
18 Commissioner of Social)
19 Security,)
20 Defendant.)
21 _____)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the record before
24 the Commissioner. The parties have filed the Joint Stipulation
25 ("JS"), and the Commissioner has filed the certified Administrative
26 Record ("AR").

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge ("ALJ") conducted a

1 full and fair hearing;

2 2. Whether the ALJ complied with the Memorandum Opinion and
3 Order of the District Court;

4 3. Whether the vocational expert's testimony has any value in
5 this case; and

6 4. Whether competent expert testimony supports a finding of
7 disability.

8 (JS at 5.)
9

10 This Memorandum Opinion will constitute the Court's findings of
11 fact and conclusions of law. After reviewing the matter, the Court
12 concludes that the decision of the Commissioner must be affirmed.
13

14 I

15 **THE HEARING ON REMAND BEFORE THE ALJ DID NOT AMOUNT**
16 **TO A COGNIZABLE DENIAL OF DUE PROCESS TO THE PLAINTIFF**

17 In Plaintiff's first issue (JS at 1-19), she asserts that at the
18 hearing conducted by the ALJ following this Court's remand order (AR
19 742-758), the ALJ exhibited a level of bias and unfairness that denied
20 Plaintiff due process.

21 As the parties understand, the standard for the Court to find a
22 due process violation is very high. There must be a demonstration of
23 actual bias to result in disqualification of an Administrative Law
24 Judge. Social Security Regulations articulate the requirement that,
25 "An Administrative Law Judge shall not conduct a hearing if he or she
26 is prejudiced or partial with respect to any party or has any interest
27 in the matter pending for decision." (20 C.F.R. § 404.940.) Case law
28 reflects the same stringent requirements. Most recently, this

1 standard was expressed by the Ninth Circuit in Valentine v.
2 Commissioner, 574 F.3d 685, 690 (9th Cir. 2009)(holding that a
3 presumption that an ALJ is unbiased can be rebutted by showing
4 conflict of interest or specific reasons for disqualification other
5 than expressions of impatience, dissatisfaction, annoyance, and even
6 anger "that are within the bounds of what imperfect men and women
7 sometimes display, ..." [Id. at 590, citing Rollins v. Massanari, 261
8 F.3d 853, 857 (9th Cir. 2001]).

9 As reflected in the JS, Plaintiff believes that the ALJ in this
10 case did express a bias which amounted to a due process violation. A
11 number of instances of such bias are cited by Plaintiff. These
12 include the ALJ's asking Plaintiff about her citizenship or legal
13 resident status (AR 713); interrupting counsel for Plaintiff when
14 counsel attempted to pose questions to the vocational expert ("VE")
15 (AR 731-733); questioning Plaintiff's work background (AR 714-715);
16 and offering an amended onset date which, if accepted, allegedly would
17 have led to a finding of disability commencing on the earlier onset
18 date (AR 734-735).

19 After a close examination of the record, the Court cannot agree
20 with Plaintiff that her hearing was conducted in a manner which
21 deprived her of due process. Thus, while the ALJ did ask about
22 Plaintiff's green card status, this occurred during a very brief
23 interchange at the outset of the hearing, and, most importantly, there
24 is nothing in the decision which leads the Court to indicate that the
25 ALJ relied upon Plaintiff's immigration status in reaching his
26 decision. This is in contrast to the first hearing, which led to the
27 Court's remand order based on a record which indicated that the ALJ
28 had relied upon Plaintiff's immigration status as a factor in the

1 determination of her credibility.

2 With regard to questioning about Plaintiff's work background, the
3 Court again cannot find a due process violation, because a claimant's
4 work history is relevant under applicable regulations. See 20 C.F.R.
5 §§ 404.1574(a)(1), 416.974(a)(1).

6 A more serious allegation is that the ALJ thwarted Plaintiff's
7 counsel from asking appropriate and relevant questions to the VE. But
8 again, when examining the record, the Court finds no due process
9 infirmity. Essentially, several of the questions posed by Plaintiff's
10 counsel with regard to the extent of functional limitations of a
11 hypothetical individual were ambiguous, and the Court views the ALJ's
12 disallowance of such questions as part of his proper function to
13 regulate the hearing, and to adduce relevant evidence. While
14 Plaintiff's counsel believes that the VE's similar expression of
15 confusion as to some of the terms utilized by Plaintiff's counsel
16 indicates that the VE was mimicking the ALJ's assertedly disingenuous
17 confusion about these terms, the Court finds nothing in the record to
18 attribute such motivations to the VE. When Plaintiff's counsel
19 ultimately posed a hypothetical question which contained clear
20 functional limitations, the ALJ permitted it.

21 Finally, Plaintiff's belief that the ALJ would have offered an
22 earlier onset date for disability if Plaintiff would have amended her
23 onset date is a speculative conclusion. There is nothing in the
24 record which indicates that an earlier onset date of disability was in
25 fact offered by the ALJ. In any event, on remand, the ALJ did find
26 Plaintiff to be disabled as of February 15, 2011, based on the
27 evidence adduced before him. It would appear that if the ALJ believed
28 that Plaintiff's disability had an earlier onset date, he would have

1 so found.

2 For the foregoing reasons, the Court finds that Plaintiff's
3 hearing was not characterized by a lack of due process.

4
5 **II**

6 **THE ALJ'S DECISION IS BASED ON SUBSTANTIAL EVIDENCE**

7 Plaintiff frames her second issue as whether the ALJ complied
8 with the Memorandum Opinion and Order of the District Court which
9 remanded this matter for a new hearing. In actuality, the issue is
10 whether the final decision of the Commissioner is to be affirmed based
11 on an absence of legal error and support by substantial evidence. See
12 Vernoff v. Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009)(stating that the
13 Commissioner "has statutory authority to interpret and enforce" the
14 Social Security Act under 42 U.S.C. § 405(a), and that the
15 Commissioner's construction of the Social Security Act must be given
16 "considerable weight"). Regardless of whether or not the ALJ fully
17 complied with the Appeal Council's remand order following this Court's
18 decision, judicial review must be limited to the question of whether
19 the ALJ's decision is supported by substantial evidence and reflects
20 the application of the correct legal standards. In order to make this
21 determination, the Court must examine the various sub-issues which are
22 contained within Plaintiff's Issue Two.

23
24 **A. Rejection of Treating Physician's Opinion.**

25 Plaintiff was treated by Dr. Lustig. In the ALJ's initial
26 decision, he gave lesser weight to Dr. Lustig because he concluded
27 that Dr. Lustig based his opinion on Plaintiff's physical condition
28 rather than her mental impairment. The Court found this to be an

1 inadequate reason for the ALJ to reject Dr. Lustig's opinion. (See AR
2 749, line 1-750, line 16.) The Court also noted that while the ALJ
3 previously relied on the opinion of Dr. Maibaum, there was a failure
4 to evaluate the opinion of Dr. Tribble or to address inconsistencies
5 between these opinions. (Id.) Thus, the Court ordered that on remand
6 the ALJ must evaluate the mental health evidence and give sufficient
7 reasons to support a mental residual functional capacity ("RFC")
8 assessment. (AR 751.)

9 On remand, the ALJ concluded that because of Plaintiff's severe
10 impairment of depression, she had moderate limitations in maintaining
11 attention and concentration, moderate limitations in carrying out
12 detailed tasks, and moderate limitations in interacting with coworkers
13 and supervisors. (AR 687.) This was a more restrictive mental RFC
14 than had been found in the original 2009 hearing decision. (AR 61.)
15 In making these findings, the ALJ noted that Plaintiff was seen by Dr.
16 Lustig in August 2006 for a psychiatric evaluation in connection with
17 her workers compensation claim. (AR 689; 276-89.) Dr. Lustig made an
18 assessment of Plaintiff's mental functioning. (AR 276-89.) Plaintiff
19 was also seen in December 2006 by Dr. Riahinejad for a consultative
20 examination in connection with her Social Security applications. (AR
21 688-89, 206-210.) Dr. Riahinejad concluded Plaintiff would have mild
22 to moderate difficulty in understanding, remembering and carrying out
23 complex and detailed instructions, but was capable of relating to
24 people and accepting supervision. Plaintiff was seen in February 2007
25 by Dr. Nehorayan, a colleague of Dr. Lustig, who also made mental
26 impairment assessments. (AR 272-274.)

27 The ALJ noted that Dr. Tribble saw Plaintiff between July 2006
28 and October 2006 in connection with her workers compensation claim and

1 made various mental impairment assessments. (AR 692, 472-81, 606-21,
2 622-56.)

3 In October 2006, as the ALJ noted, Plaintiff was seen by Dr.
4 Maibaum, also in connection with a workers compensation case. While
5 Dr. Maibaum did not make a psychiatric diagnosis, he indicated
6 Plaintiff could be referred for psychotherapy and that her condition
7 was moderate. (Ar 692, 599-607.)

8 Plaintiff saw Dr. Charuvastra between June 2006 and April 2007.
9 The treatment notes indicate that Plaintiff was depressed, had short
10 concentration, intact memory with difficulty in immediate and recent
11 memory due to depression, a somewhat tenuous impulse control and
12 irritability, and, finally, that her psychiatric illness was a product
13 of her chronic pain. (AR 695, 262-64.) He noted that Plaintiff was
14 seeing a psychiatrist in 2006, but there is no such notation for 2007.
15 Dr. Charuvastra indicated he began Plaintiff on the antidepressant
16 Prozac and the sleep-aid Halcyon, but these prescriptions are absent
17 from later treatment notes. (AR 236, 239, 242, 248, 251, 254.)

18 As the ALJ noted, between May 2007 and May 2008, Plaintiff was
19 treated for depression and was prescribed medications, including one
20 for anti-seizure and one for anti-anxiety. (AR 698, 564-87.)

21 The ALJ noted that in March 2007, a State Agency reviewing
22 physician (Dr. Mallare) found that Plaintiff had an affective disorder
23 which would cause mild limitations in various areas of mental
24 functioning. (AR 693, 211-224.) A reviewing physician, Dr. Carlson,
25 adopted Dr. Mallare's assessment in July 2007. (AR 300.)

26 The ALJ also summarized Plaintiff's testimony, including a
27 statement that she no longer saw Dr. Charuvastra. Plaintiff testified
28 she was seeing another doctor for anxiety and depression and that she

1 received medications from this physician, Dr. Lopez. (AR 720-21.)

2 Plaintiff ceased medical treatment in 2008 and there is no
3 evidence of further orthopedic and psychiatric consultative
4 examinations until after the remand. (AR 695.)

5 In a February 2011 consultative examination, Plaintiff indicated
6 she was prescribed an antidepressant from her primary care physician
7 and that she had never seen a psychiatrist. Dr. Levin indicated that
8 Plaintiff had no functional limitations from a psychiatric standpoint
9 and there was no evidence that Plaintiff in fact was prescribed an
10 antidepressant until 2011. (AR 799, 695.)

11 The ALJ noted that Drs. Lustig, Nehorayan, Tribble and Maibaum
12 evaluated Plaintiff for purposes of her workers compensation claim,
13 but failed to provide treatment, and therefore he would give their
14 opinions "lesser weight." (AR 695.)

15 Based on all of this evidence, the ALJ concluded that before
16 Plaintiff was seen by Dr. Levin in February 2011, her mental
17 impairment caused only moderate limitations in certain areas of mental
18 functioning. (AR 694.)

19 The ALJ's assessment that the workers compensation physicians
20 were entitled to lesser credibility because they were not treating
21 physicians is an accepted basis of evaluation in Social Security
22 cases.

23 Evaluating all of the evidence in the record regarding
24 Plaintiff's mental impairment and any functional restrictions caused
25 by it, the ALJ effectively balanced some of the competing or at least
26 inconsistent findings of the various physicians in formulating a
27 mental RFC. The restrictions assessed by Dr. Riahinejad and Dr.
28 Maibaum were compared by the ALJ with more restrictive assessments of

1 Drs. Tribble, Lustig and Nehorayan. Ultimately, the ALJ made a
2 rational and supportable determination among competing evidence.

3
4 **B. Consideration of Physical Health Evidence.**

5 As Plaintiff correctly points out, in its previous decision in
6 this case, the Court found that the ALJ had not provided any reason to
7 reject the opinion of her treating physician, Dr. Larsen. (AR 756-
8 757.) On remand, however, the ALJ acknowledged that Plaintiff had
9 discussed Dr. Larsen in her own testimony (AR 688). In his decision,
10 he summarized in detail Dr. Larsen's findings. (AR 690.) The ALJ also
11 discussed treating records from Dr. Larsen and summarized them. (*Id.*)
12 The ALJ discussed evidence that conflicted with Dr. Larsen's opinion,
13 which led him to give less weight to the latter. This included a
14 November 2004 workers compensation examination by Dr. Rosco (AR 690,
15 366-373) and a November 2005 orthopedic examination by Dr. Rosenberg
16 (AR 691, 432-41). The ALJ found Dr. Rosenberg's opinion to be more
17 valid and consistent with that of Dr. Rosco. (AR 691.) Other medical
18 records were cited by the ALJ in support of this conclusion, including
19 July 2006 medical records of Dr. Valdez (AR 691, 468-71), and July
20 2007 medical records from Dr. Brouman (AR 692, 491-500). There were
21 also medical records from 2007 from Dr. Linder (AR 692, 507-24, 657-
22 76). The ALJ found, for example, that Dr. Linder concluded that there
23 were no abnormal findings from a neurological examination, thus
24 contradicting Dr. Larsen's conclusion that Plaintiff suffered from
25 carpal tunnel syndrome. (AR 695.)

26 All in all, the Court must find that the ALJ took to heart its
27 remand, including its instruction that Dr. Larsen's opinion must be
28 evaluated both in and of itself, and in conjunction with other medical

1 opinions. This in fact occurred, and the Court cannot find that the
2 ALJ committed reversible error in making these evaluations.

3
4 **C. Plaintiff's Subjective Testimony.**

5 In the Court's remand order, it found that the ALJ's analysis of
6 Plaintiff's subjective symptoms was deficient (AR 752-56), and
7 therefore ordered the ALJ to reevaluate her credibility. (AR 756.)
8 This time around, the ALJ did not rely upon Plaintiff's immigration
9 status as an improper basis to depreciate her credibility, and did not
10 make a finding of malingering with regard to Dr. Rosenberg's
11 assessment of symptom magnification. (AR 691.) Rather, the ALJ used
12 accepted and standard techniques of credibility assessment.

13 After reviewing Plaintiff's testimony at the resumed hearing, the
14 ALJ determined to give her subjective complaints limited weight
15 because there was a lack of support in treatment records for the
16 extent of her complaints. This is one obviously permissible factor of
17 credibility assessment, although it cannot be the only one. The ALJ
18 also found that Plaintiff had received inconsistent treatment for her
19 depression, noting that she had told Dr. Levin she had never seen a
20 psychiatrist, and that she was primarily treated with anti-seizure
21 medications and anti-anxiety medications rather than antidepressants.
22 In addition, Plaintiff had not been prescribed narcotic pain
23 medication other than an isolated prescription for Vicodin in November
24 2007. Other than that, Plaintiff utilized conservative treatment
25 which may be compared with the extent of complaints in formulating a
26 credibility assessment. See Tommasetti v. Astrue, 533 F.3d 1035, 1040
27 (9th Cir. 2008).

28 Further, the ALJ noted that in spite of her complaints of pain

1 and history of surgeries, she continued working for three to four
2 years after her surgery. (AR 688, 695-96.) This factor was
3 permissible in the process of evaluating Plaintiff's credibility. See
4 Osenbrock v. Apfel, 240 F.3d 1157, 1165-66 (9th Cir. 2001).

5 Finally, the ALJ noted an absence of any treatment after 2008
6 other than medication refills which also constitutes (as failure to
7 seek treatment or failure to follow prescribed treatment) a proper
8 credibility assessment factor. See Orn v. Astrue, 495 F.3d 625, 638
9 (9th Cir. 2007).

10 The Court finds that on remand the ALJ's credibility assessment
11 is supported by substantial evidence.

12 13 III

14 **THE TESTIMONY OF THE VOCATIONAL EXPERT WAS PROPERLY RELIED UPON**

15 **A. The Vocational Expert Was Properly Qualified to Testify.**

16 In her third issue, Plaintiff asserts that the VE was not
17 properly qualified; that her testimony deviated from the Dictionary of
18 Occupational Titles ("DOT") without any explanation of the deviation;
19 and that she gave testimony too uncertain to be of any value. The
20 Court rejects these contentions for the following reasons.

21 As to the qualifications of the VE, she testified that she has
22 been a VE for over 30 years, has a master's degree in psychology, has
23 been an expert witness on the panel [for Social Security hearings] for
24 over ten years, and has a certificate of alcohol and drug abuse from
25 UCLA. (AR 724.) In answer to questions from Plaintiff's counsel, she
26 indicated that she is doing vocational counseling with about ten
27 people, that she does not have a degree in vocational rehabilitation.
28 (Id.) She is a member of the International Association of

1 Rehabilitation Professionals. (Id.)

2 The ALJ overruled the objections of Plaintiff's counsel to the
3 lack of qualifications of the VE.

4 As Plaintiff's counsel correctly concedes, there is no definition
5 of a VE in the Social Security Act. 20 C.F.R. § 404.5 provides that
6 a vocational expert is a "vocational professional who has the
7 qualifications required by the Commissioner ..." Plaintiff also cites
8 a document called a Vocational Expert Handbook and also the DOT
9 itself. As to the Vocational Expert Handbook, Plaintiff claims that
10 the VE failed the requirement therein at p. 11, which is that
11 vocational experts must possess up-to-date knowledge with regard to
12 industrial and occupational trends and local labor conditions. As to
13 the DOT, Plaintiff has found titles for the occupation "Vocational
14 Counselor," which are summarized in the JS. (See, Id. at 45-46.)

15 Initially, the Court notes that the applicable regulation, 20
16 C.F.R. § 405.5, defines a VE as a vocational professional who has the
17 qualifications required by the Commissioner. Certainly, that would
18 not allow the Commissioner to qualify a hod carrier as a VE, but
19 nothing like that extreme example is provided by this case. The
20 Commissioner is guided by the Hearings, Appeals and Litigation Law
21 Manual (known as "HALLEX") which provides that vocational experts "are
22 vocational professionals who provide impartial expert opinion during
23 the hearings process ..." Pursuant to that internal regulation, the
24 VE testified that she has acted as a vocational expert for over 30
25 years and has been on the expert witness panel for over ten years.
26 She has provided vocational counseling for about ten people, has
27 advanced degrees and some certificates in relevant areas. Simply put,
28 the Court cannot find that the VE in this case was unqualified, in

1 part based on the fact that there are no strict qualifications in any
2 of the applicable regulations which this VE failed to meet. With
3 regard to Plaintiff's argument that the Court should use analogous DOT
4 occupational descriptions, the Court cannot find any legal precedent
5 which would allow that type of analysis. Moreover, the Court declines
6 Plaintiff's invitation to review various websites concerning
7 vocational rehabilitation counselors. The Court will confine itself
8 to the record in this case.

9 Finally, while Plaintiff claims there were inconsistencies in the
10 VE's testimony between the requirements of her past relevant work and
11 the requirements of the DOT occupation, these are not specified, and
12 the Court will not speculate.

13 For the foregoing reasons, the Court determines that Plaintiff's
14 third issue is without merit.

15 16 IV

17 THE VOCATIONAL EXPERT'S TESTIMONY WAS PROPERLY RELIED UPON 18 TO SUPPORT A FINDING OF NON-DISABILITY AT STEP FOUR

19 Plaintiff's final issue is that, for various reasons, the ALJ
20 should and could not rely upon the testimony of the VE in finding at
21 Step Four of the sequential evaluation process that Plaintiff could
22 perform her past relevant work. In making this argument, Plaintiff
23 combines a number of separate contentions, including the following:
24 that the hypothetical questions posed to the VE were inadequate or
25 incomplete; that the hypothetical questions improperly excluded
26 Plaintiff's subjective pain complaints as reflected in her testimony;
27 and that the hypothetical questions improperly excluded limitations
28 assessed by Plaintiff's psychiatrist and her orthopedist.

1 Addressing the first sub-issue, the Court concludes that the
2 hypothetical questions posed to the VE properly incorporated
3 Plaintiff's functional limitations as determined by the ALJ in his
4 decision. Of course, it is hornbook law that the limitations posited
5 in hypothetical questions must incorporate all of the found
6 limitations and restrictions of the particular claimant. See Embrey
7 v. Bowen, 849 F.3d 418, 422 (9th Cir. 1988). In this case, the VE
8 identified Plaintiff's past relevant work in relation to the DOT as
9 "overlock sewing machine operator, DOT 786.682-194." (AR 726.) The
10 hypothetical questions posed to the VE (see AR at 728-29), in
11 particular the first question, correlated well with the RFC assessed
12 by the ALJ. (AR 687, 694.) As such, the ALJ found that the
13 restrictions in the hypothetical question as to Plaintiff's
14 limitations conformed to the DOT descriptions of Plaintiff's past
15 relevant work.

16 In formulating the RFC, the ALJ relied upon an orthopedic
17 consultative examination ("CE") performed by Dr. Pollis (AR 694, 803-
18 13). This CE was triggered by the Court's remand and instructions
19 from the Appeals Council. As the ALJ noted, it appeared that
20 Plaintiff did not receive any medical treatment in 2008 or thereafter,
21 (other than medicine refills), until she was seen in 2011 for the CE
22 (both orthopedic and psychiatric). Based on this new evidence, to
23 which was accorded "considerable weight" (AR 696), the ALJ determined
24 that Plaintiff's RFC had changed from the RFC assessed in the previous
25 decision. (See 20 C.F.R. §§ 404.1545(a), 416.945(a).)

26 Plaintiff argues that the exertional requirements of the DOT as
27 to her past relevant work include a "temperaments" category which, she
28 argues, were not incorporated into the ALJ's hypotheticals, and in

1 particular, did not utilize restrictions imposed by Dr. Lustig. But,
2 as the Court has already discussed, the ALJ rejected Dr. Lustig's
3 opinions, and as such, they were not required to be included with the
4 hypothetical questions. Further, the hypothetical questions assumed
5 that Plaintiff would have "moderate" restrictions in maintaining
6 concentration, persistence, and pace and in carrying out detailed
7 tasks, and also in interacting with coworkers and supervisors. (AR
8 687, 726.) The Court finds no error in this portion of the
9 hypotheticals. Further, the VE testified that the only possible
10 ambiguity with regard to Plaintiff's performance of her past relevant
11 work was whether she performed it at the medium exertional level, as
12 against the light exertional level, and was not because of any mental
13 restrictions.

14 Plaintiff also incorporates in her fourth issue a failure by the
15 ALJ to include restrictions imposed by other medical sources, such as
16 Dr. Larsen. Again, the Court has already addressed the ALJ's
17 assessment and rejection of some of Dr. Larsen's opinions.

18 With regard to Plaintiff's own testimony regarding functional
19 limitations, the ALJ did not include them, after making credibility
20 findings. (AR 695.) Giving Plaintiff's counsel the benefit of the
21 doubt, it would appear that she is raising a challenge to these
22 credibility findings. (See JS at 56-57.) The Court rejects this
23 challenge, in that the ALJ provided sufficient and substantive reasons
24 in the decision (see AR at 693-94) to reject Plaintiff's credibility:
25 a lack of narcotic pain medication in the face of complaints of severe
26 pain; a cessation of medical treatment in 2008; no evidence of
27 psychiatric treatment after 2007; and contradictions concerning
28 Plaintiff's report to a consultative psychiatric examiner as to the

1 fact that she had never seen a psychiatrist. (See, Id.) Based on
2 this, the ALJ properly gave "limited weight" to her testimony and
3 statements.

4 Finally, Plaintiff appears to argue that she should be found to
5 be disabled under the Medical-Vocational Guidelines, known as the
6 "Grids." (See 20 C.F.R., Part 404, Subpart P, Appendix 2, Rule
7 202.09.) But in this case, the ALJ determined that Plaintiff could
8 perform her past relevant work at Step Four of the sequential
9 evaluation process. The Grids are used at Step Five only where there
10 is a determination that a claimant cannot do past relevant work. For
11 that reason, Plaintiff's argument is unavailing.

12 For the foregoing reasons, the decision of the ALJ will be
13 affirmed. The Complaint will be dismissed with prejudice.

14 **IT IS SO ORDERED.**

15
16 DATED: August 1, 2012

17 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE